IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1948 OF 2004

Raymond Joseph Clinch ...Petitioner

Versus

The Principal Secretary & Anr. ...Respondents

.....

Mr.Uday Warunjikar for Petitioner.

Mr.K.V.Saste, A.P.P. for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

DECEMBER 2, 2004.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith, by consent. Mr.Saste, learned A.P.P. waives notice for Respondents.

3. As short question is involved, the matter is taken up for final disposal forthwith, by consent.

4. The Respondents invoked the powers under Section 56 of the Bombay Police Act and have ordered externment of the Petitioner by order dated October 17, 2003. This order was questioned before the Appellate Authority, namely; the Home Department, State of Maharashtra. In the appeal, specific grievance was made that in the enquiry under Section 56 of the Act, the Petitioner had adduced evidence of four witnesses namely; Vivek Chandrashekhar Chandane, Suryakant Anant Kakade, Amit Digamber Khandve and Satish Pralhad Raut in support of his case. However, that evidence was not adverted to by the first Authority in the order as passed. Inspite of this grievance made in the Appeal, even the Appellate Authority dismissed the appeal preferred by the Petitioner by its order passed in July 2004, without referring to the said grievance or evaluating the evidence adduced on behalf of the Petitioner. The grievance made by the Petitioner is substantiated from the record. In other words, both the Authorities below have failed to take into account the evidence adduced by the Petitioner in his support. It is one thing to

refer to the evidence and reject the same, but making no reference to the evidence, clearly vitiates the final decision taken by the Authorities.

5. In the circumstances, the appropriate course, to my mind, without going into any other contentious issues raised in this Petition, is, to set aside the order passed by the Appellate Authority and relegate the Petitioner before the Appellate Authority, who in turn, shall decide the appeal on its own merits, in accordance with law, after considering the entire evidence, including the evidence adduced by the Petitioner as referred to above. The appeal shall be decided *de novo* within one month from the receipt of writ of this Court.

6. Rule made absolute on the above terms.

A.M.KHANWILKAR, J.